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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,631	07/26/2004	Stephen Titus		4338

21005 7590 02/05/2007  
HAMILTON, BROOK, SMITH & REYNOLDS, P.C.  
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CONCORD, MA 01742-9133

EXAMINER
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GRAHAM, MARK S

ART UNIT	PAPER NUMBER
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3711

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/710,631

Applicant(s)

TITUS, STEPHEN

Examiner

Mark S. Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 13 is/are allowed.
- 6) ☒ Claim(s) 8-11 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang '333 (Chang) in view of Rambow.

Chang discloses the claimed device with the exception of the type of wood used for the core. However, as disclosed by Rambow it is known in the art to use light woods to form cue sticks. The examiner took official notice that spruce and Sitka spruce are commonly known light woods and such is now admitted prior art. It would have been obvious to one of ordinary skill in the art to have used such woods to form Chang's stick as well if such were the most readily available to the ordinarily skilled artisan or if such provided a cost advantage.

Regarding the particularly claimed density absent a showing of unexpected results, the exact density of Chang's stick would obviously have been up to the ordinarily skilled artisan depending on the weight desired by the user of the stick.

In response to applicant's arguments the prior art clearly teaches using lighter woods than standard to form cue sticks. Obviously using a lighter wood than standard results in a lighter cue stick all other things being equal. Thus, an ordinarily skilled artisan desiring a lighter cue stick and with the knowledge based on Rambow that lighter woods may be used to make cue sticks would have found it advantageous to use lighter woods to make a lighter cue stick. The ordinarily skilled artisan's motivation for

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arriving at the claimed invention does not have to be the same as applicant's motivation for arriving at the invention. Concerning the actual density of the wood, note the examiner's above remarks.

The passages pointed out by applicant in Rambow only reinforce the point that it is known in the art to use lightwoods as opposed to hardwoods to construct cue shafts. As to the type of "lightwood" meant by Rambow there is no support for the assertion that such a "lightwood" would be maple which is generally considered a hardwood. Moreover, the point of the rejection is that Rambow teaches using lighter woods than would be normal. In contradiction to applicant's assertion that Rambow does not teach "lighter than standard" wood, Rambow specifically states "Another characteristic of the invention is that American woods may be used in lieu of the heavier foreign woods which are becoming scarce and costly." (Lines 85-87) Armed with such a teaching it would have been obvious to one of ordinary skill in the art to have used various lightwoods to manufacture a cue stick depending on the weight desired in the cue stick absent a showing of unexpected results of the lightwood particularly claimed by applicant.

In response to applicant's final argument, the examiner is not relying on any reference or personal knowledge of a cue stick having a density below 9 grams per cubic inch. Therefore, MPEP 2144.03 is not applicable. The rejection is based on the fact that in light of the teachings of Rambow and the admitted knowledge of applicant that spruce and Sitka spruce are commonly known light woods it would have been

obvious to one of ordinary skill in the art to have used such to manufacture a cue of a particularly desired weight.

Applicant's arguments filed 11/15/06 have been fully considered but they are not persuasive.

Claims 12 and 13 are allowed.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

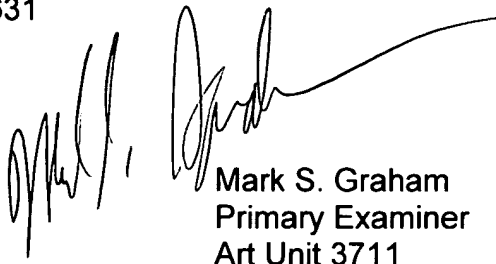
Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

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1/24/07



Mark S. Graham  
Primary Examiner  
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